THE HON'BLE SRI JUSTICE J.CHELAMESWAR

AND

THE HON'BLE SRI JUSTICE M.VENKATESWARA REDDY

WRIT PETITION No.26244 OF 2005

ORDER: **(Per Hon'ble Sri Justice M.Venkateswara Reddy)**

The petitioner, who was unsuccessful before the Andhra Pradesh Administrative Tribunal, Hyderabad (for short "the Tribunal") is questioning the orders of the 1st respondent, dated 24.08.2005, transferring him as Joint Director, Office of the Director of Health, Hyderabad from Warangal where he was working as Medical and Health Officer.

The 3rd respondent, who was working as Joint Director in the office of the Director of Health, Hyderabad, was transferred and posted in the place of the petitioner as District Medical and Health Officer, Warangal in the same orders of transfer by the first respondent. The petitioner alleges that there are no disciplinary proceedings pending against him nor there was any report against him sent by the District Collector, Warangal District as had happened in the case of some others. The petitioner would be attaining superannuation on 30.04.2006 while the 3rd respondent by the end of May, 2006. He also made a representation not to disturb him from Warangal when he came to know that the 3rd respondent was having high influence and can make the things happen. The Hon'ble Member of Legislative Assembly, Shayampet, Warangal District also made a request to the Hon'ble Chief Minister on behalf of the petitioner in that regard. But the 3rd respondent could prevail over the Government with the influence exerted by the Hon'ble Minister for Major Irrigation and Member of Parliament,

Sri Vinod Kumar. In fact, the 3rd respondent was under suspension and was reinstated in service by orders, dated 25.11.2004. The 2nd respondent, who is

the Head of Department never recommended to replace the petitioner by the 3rd respondent. But for the recommendations of the Hon'ble Minister for Major Irrigation and Member of Parliament Mr.Vinod Kumar, the transfer would not have been made. The Government dropped further action in the disciplinary proceedings launched against the 3rd respondent on 18.08.2005, just six days before the impugned transfer order was issued. The petitioner further pleads that the application in O.A.No.4926 of 2005 filed by him before the Tribunal challenging the transfer order was erroneously dismissed.

The 3rd respondent in his counter admits that the Hon'ble Minister for Major Irrigation, Ponnala Laxmaiah and the Member of Parliament Sri Vinod Kumar had recommended his case for transfer to Warangal since he is the senior most Civil Surgeon. He alleges that several representations were made against the petitioner herein that he was encouraging illegal operation of private nursing homes and private clinics in the backward district; that the allegations made against him were not proved in the enquiry and therefore, the proceedings were dropped against him (3rd respondent) and that the Government is the competent authority to order transfer in the interest of the administration and for administrative exigencies. He further says that based on the D.O. letter of the District Collector, Warangal and also based on the recommendations of the 2nd respondent the transfer orders were made.

In the transfer order G.O.Rt.No.921, Health, Medical and Family Welfare, (B1) Department, Dated 24.08.2005, six transfers were effected. Except the transfer of the petitioner, all other transfers were effected at the request of the respective transferees. It is only the petitioner herein who was given T.T.A. and joining time. By the date of the passing of the said transfer order, the petitioner was left with just eight months service to attain superannuation. The Andhra Pradesh Government imposed some restrictions on transfer of employees, who are going to retire within one year, from the places where they are working vide G.O.Ms.No.379, General Administration (Ser.A) Department, dated 29.08.1996, the main contents of which read as under:

"Instructions were issued from time to time regarding the transfer of the Government Employees from one post to another and from one place to another. Based on the recommendations of the Administrative Reforms Committee, the Government issued instructions in the G.O. first read above that no Government Servant should be transferred from one place to another before he has put in atleast three years of service in either focal or non-focal point to the post, except on grounds of promotion or as a measure of penalty, or at the Officer's own request in very special cases. While ordering such transfers, it was also instructed that special disabilities of the Officer concerned with particular reference to health or education of his children may be kept in view.

2. The Andhra Pradesh Non-Gazetted Officers Association in their representation 3rd read above have now made certain requests, among others, to give instructions restricting the transfer of employees who are going to retired within one year from the places where they are presently working.

3. The Government after careful consideration, hereby direct that employees who will attain superannuation within one year from the day on which the authority propose to transfer him may not be transferred from the places where they are presently working, except on grounds of promotion or as a measure of penalty or at one's own request in very special case.

4. All the Departments of Secretariat, Heads of Departments and District Collectors shall follow the above instructions scrupulously."

Thus, as per the above G.O. the employee who will attain superannuation within one year from the date on which the authority proposes to transfer him may not be transferred from the place where he is presently working except on grounds of promotion or as a penalty or at one's own request in a very special case. The petitioner has not made any request for his transfer nor the transfer is on account of promotion or as a measure of penalty. The contention is that the transfer is made in disregard of the above mentioned G.O. It is not in dispute that the petitioner having come to know about the efforts made by the 3rd respondent made a representation not to disturb him from Warangal and the same did not weigh with the 1st respondent.

We had perused the file produced by the learned Government Pleader at the time of hearing. We could notice that the transfer of the petitioner is made against the office note and the recommendations of the Minister prevailed. The petitioner was having hardly eight months service left with by the date of the orders of transfer. Therefore, he would not have been touched as per the instructions issued by the Government in the G.O. mentioned supra. Thus, it is obvious that the transfer of the petitioner is made to accommodate the 3rd respondent at the instance of his patrons, who could take up successfully the cause of the 3rd respondent turning deaf-ear to the representations made by the petitioner.

The power to transfer has to be exercised according to rules, bona fide and for administrative exigencies. Exigencies of administration or administrative exigency means the need or demand for running a good administration. The Supreme Court in ***K.B.SHUKLA v. UNION OF INDIA*** pointed out that the responsibility for good administration is that of the Government and the maintenance of an efficient, honest and experienced administrative service is a must for the due discharge of that responsibility.

A transfer is a need of good and efficient administration. The transferring authority while exercising its power is obliged to apply its mind before such exercise and it cannot abdicate its obligation to do so. Even a slightest encroachment or a little occupation of the discretionary domain of the transferring authority by an extra legal authority is indicative of decadence of proper and effective governance, ultimately affecting the public interest and welfare. The authorities ordering transfer of an employee should act atleast in a reasonable manner. This is the minimum expected of them. This has not happened in this case. This Court had an occasion in ***S.RAMA GANGI REDDY v. GOVERNMENT OF ANDHRA PRADESH*** to deal with a similar situation. His lordship Justice Sivaraman Nair, as he then was, after quoting elaborately from the earlier Supreme Court decisions, held:

> "Dealing with a similar question Lord Denning observed in Merricks V. Nott Bower, 1964 (2) WLR 702 AP 707.
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> "It is a well known principle of our law that any power

> conferred by statute or regulation on an executive or administrative authority must be exercised in good faith for the purpose for which they are granted. They must not be misused or abused by being applied to an ulterior purpose. Whether that principle applies here or not, I do not say, all I do say is that if the plaintiffs allege, as they do, that this was a misuse of the power of transfer, that it was used, nor for the purpose of good administration and efficiency but for the motive of punishment…….they have an arguable case which they are entitled to have tried by the courts"

I do not propose to multiply authorities. It is necessary to ensure that orders of transfer are issued in bona fide exercise of administrative power, in public interest, in exigencies of administration and the requirements of public service. It shall not be used for purposes which are totally extraneous to the above considerations or to settle personal scores between patrons who take civil servants under their wings. It is always better and safer to leave the question of transfer and postings of government servants to be handled by top personnel in the department after laying down policy guidelines which should usually apply to all such cases. The power of transfer shall not be used for extraneous purposes; it shall be confined to considerations which are germane and relevant. It is necessary that orders of transfer shall be made or modified only on the basis of the above considerations.

14. In the present case, it is not so much public interest; but perhaps the weight of the patrons that determined the fate of the parties. The only fact that such persons undertake to plead the cause of a government servant shall not, by itself, be the only reason for ordering or modifying transfers. Unfortunately that was exactly what happened in this case. I am therefore not in a position to uphold the impugned order transferring the petitioner out of the 3rd respondent Society to accommodate the 4th respondent."

Thus, the instant case is squarely covered by the above decision.

A Division Bench of Bombay High Court in ***SHESHRAO NAGARAO UMAP v. STATE OF MAHARASHTRA AND OTHERS*** ruled:

> "It is an accepted principle that in public service transfer is an

> incident of service. It is also an implied condition of service and appointing authority has a wide discretion in the matter. The Government is the best Judge to decide how to distribute and utilize the service of its employees. However, this power must be exercised honestly, bonafide and reasonably. It should be exercised in public interest. If the exercise of power is based on extraneous considerations or for achieving an alien purpose or an oblique motive it would amount to mala fide and colourable exercise of power. Frequent transfers, without sufficient reasons to justify such transfers, cannot, but be held as mala fide. A transfer is mala fide when it is made not for professed purpose, such an in normal course or in public or administrative interest or in the exigencies of service but for other purpose, that is to accommodate another person for undisclosed reasons. It is the basic principle of rule of law and good administration, that even the administrative actions should be just and fair. Frequent unscheduled and unreasonable transfers can uproot a family, cause irreparable harm to the employee and drive him to desperation. It disrupts the education of the children and leads to numerous other inconveniences and problems and results in hardship and demoralization. Therefore, the policy of transfer should be reasonable and fair and should apply to everybody equally."

There is no need to multiply the authorities. The transfer made in this case is with an ulterior purpose though the petitioner was hardly having eight months service ahead of him by the date of transfer, to accommodate the 3rd respondent. Thus, this is a fit case where the writ petition can be allowed declaring G.O.Rt.No.921, Health, Medical and Family Welfare (B1) Department, dated 24.08.2005 issued by the 1st respondent as arbitrary, illegal and mala fide insofar as it related to the transfer of the petitioner from Warangal. The Writ Petition is accordingly allowed with costs setting aside the order of the Tribunal in O.A.No.4926 of 2005, dated 30.11.2005 and G.O.Rt.No.921 Health, Medical and Family Welfare (B1) Department, dated 24.08.2005 issued by the 1st respondent insofar as it related to the transfer of the petitioner and the 3rd respondent.

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J.CHELAMESWAR, J.

Date: .04.2006.

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M.VENKATESWARA REDDY, J.

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